CF0000060808

CrA 388/97

JJ-189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

Division Bench ( )

No. 1010 Name रामसाय

Father's name धीरसाय

Residence परसापाली एरंडिया Age ८० वर्ष

Sentenced to आजन्म कारावास On ०७-११-९६

Under section ३०२ भा.दं.सं. by सत्र न्यायाधीश रायगढ़

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ..... 5 कापी में ०७-११-९६ एवं १०-११-९६

2 Date on which copy received ०७-११-९६

3 Date on which Appeal sent ९-११-९६

4 Whether the prisoner wishes to be represented or not – ~~Yes~~ / No

No. 1010 Name रामसाय

Confined in ~~[illegible]~~ केन्द्रीय Jail ~~[illegible]~~ स्थानापन्न-केन्द्रीय रायपुर

No. 22332 Dated २१/११/९६ 199

forwarded to the CHIEF JUDICIAL MAGISTRATE रायगढ़

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

समग्र-निर्णय प्रतिलिपि।

Superintendent
Superintendent
District Jail Raigarh

Date of receipt in ..... office

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No C/C 22 RNGK Dated 2-12-96 199

Forwarded to the Court of Sessions Judge, Raigarh along with Cr. Appeal No. 219/96 of the Accused and Committal Order. 398/2 Cr. Appeal

Date of receipt in Appellate Court .....

(P. T. O.)

2-12-96

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक Cr.App. No. 388/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

10.3.2006

Miss Sangeeta Mishra, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of t e Cr.P.C accused/ appellant Ramlal has questioned the legality and correctness of judgment of conviction and order of sentence dated 7th November, 1996, passed by learned Sessions Judge, Raigarh, in Sessions Trial No.219/95, whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 10.8.1995 at about 8.30 a.m. in the morning Nanki Dau (PW-1) lodged the report in the Police Station Kharsiya to the effect that Kotwar of Village Parsapali namely Chain Singh informed him that in the last night Ramlal has murdered Manglu. On which he went on the site and saw that Manglu was lying dead, therefore, he summoned the Panch Babulal, Sammukh Prasad Pandey, Jhaduram Yadav & Maheshlal. They also saw the dead body of Manglu. There were injuries on the head and face of Manglu. Receiving this report, the Station House Officer, Police Station Kharsiya registered the F.I.R. (Ex.P-2) for commission of offence under Section 302 of the I.P.C., proceeded to the scene of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

occurrence and prepared the Panchnama (Ex.P-3) of the dead body of deceased Manglu. He took into possession the blood stained soil and plain soil under Ex.P-4, sent the body for postmortem examination to Primary Health Centre, Kharsiya, where Dr. D.C. Kinger (PW-5) conducted the postmortem on the body of deceased, prepared the postmortem report Ex.P-5 and opined that the cause of death is coma & shock due to injuries and excessive internal hemorrhage. Site plan Ex.P-7 was prepared by Patwari. One sando baniyan, one lungi and lathi, weapon of offence were taken into possession under Ex.P-10 from the possession of the accused. Site Plan Ex.P-12 was prepared by the Investigating Officer. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur from where report Ex.P-16 has received.

After completion of investigation, charge sheet was filed in the Court of learned Judicial Magistrate, First Class, Raigarh, for commission of offence under Section 302 of the I.P.C. against the accused, who in turn committed the case to learned Sessions Judge, Raigarh for trial.

The prosecution in order to establish the charge against the accused examined as many as seven witnesses. Statement of the accused was recorded by learned Sessions Judge under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime.

Learned Sessions Judge after hearing the arguments of respective counsel, convicted & sentenced the accused in the manner as mentioned in Para 1 of this judgment.

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मामला क्रमांक ..... सन् 200

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We have heard Miss Sangeeta Mishra, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. Akhil Mishra, P.L. on behalf of the State/respondent.

Homicidal death of Manglu is not in dispute.

As far as involvement of the accused/appellant in committing the murder of Manglu is concerned, there is no eyewitness in this case, the conviction rests on the evidence of PW-3 Chain Singh & PW-4 Jhaduram.

PW-4 Jhaduram has stated in his evidence that the accused made extra judicial confession before him. He has further stated that at about 12.00 in the night, Chain Singh came to him and informed that Ramlal has committed murder of Manglu. Thereafter he along with Sammukh Prasad & Mahinder went to scene of occurrence and saw that dead body of Manglu was lying and there were injuries on his head and face. They advised the Kotwar to lodge the report in the police station. In Para-3 of evidence, he has stated that when they were going to see the dead body of Manglu, on the culvert accused Ramlal met and after addressing Sammukh Prasad he said that he has murdered Manglu, at that time he, Mahinder & Babulal were also present. Thereafter the accused went towards Aurda. In the cross-examination of this witness the defence has not been able to elicit any circumstance which makes the evidence of this witness unreliable or untrustworthy.

The extra judicial confession stands corroborated by the evidence of PW-3 Chain Singh, who has stated in his evidence that on the fateful night at about 10.00 p.m. deceased Manglu came to his house, met his father and complained to him that accused Ramlal is not sending his wife and daughter, at that time he was also at the residence. As his father noticed that Manglu

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was in drunken condition, therefore, his father advised him to go to house, on which deceased left. After a short while at about 11.00 p.m. he heard the sound of मारपीट, therefore, he along with Teerathram went towards the side from where the sound was coming and saw that accused Ramlal was standing and Manglu was lying on the ground. There were numerous injuries on the face of Manglu, on which he asked Ramlal to go and sit in the house and he is going to call the Panchas. Thereafter, he called the Panchas namely Babulal, Shambu Prasad, Mahendra, Jodhram & Jhaduram, they saw that Manglu was lying dead on which Sarpanch advised to lodge the report. When he along with Teerathram went on the scene of occurrence for the first time, at that time Manglu was already dead and accused was standing there holding lathi in his hand. On asking the leading question by the public prosecutor, this witness has stated that he asked Ramlal on which he said that you go away otherwise I will kill you also. In the cross-examination of this witness also the defence has not been able to elicit any circumstance which goes to show that the evidence of this witness is not trustworthy.

In view of the above evidence of this witness that Manglu was lying dead on the ground, there were injuries on his face, accused Ramlal was standing there holding stick in his hand and when this witness asked him something, the accused said that you go away otherwise I will kill you also, the extra judicial confession made by the accused before Jhaduram (PW-4) stands corroborated. In view of the above fact that extra judicial confession was made before Jhaduram (PW-4) and accused was seen holding lathi in his hand on the spot where the dead body of deceased Manglu was lying, this establish that the accused was the author of crime in question.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Moreover, as per medical evidence of Dr. D.C. Kinger (PW-5) as many as 13 injuries were noticed on the body of deceased out of which there was fracture of frontal bone, temporal bone & mandible bone. Jaw and front teeth were also found broken.

Learned counsel for the accused/appellant argued that other witnesses namely Babulal, Sammukh Prasad, Mahinder, Teerathram & Jodhram have not been produced.

It is true that these witnesses have not been produced, but even without their evidence, from the evidence of PW-3 Chain Singh & PW-4 Jhaduram the complicity of the accused in the crime in question is established, therefore, non-production of those witnesses has no consequence in the matter. Moreover, looking to the number of injuries and the manner in which the accused assaulted the deceased mercilessly on the vital part of the body i.e. head, as a result almost all the bones of head were found fractured, the intention of the accused to cause death of Manglu is also established.

In the result, we do not find any illegality or infirmity in the judgment of trial court, the appeal being devoid of merit liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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